



"TraFinG" – The transparency register becomes a full-fledged register

Dear Readers,

The German legislator is endeavoring to complete outstanding legislative projects at the end of the current legislative period. Effective August 1, 2021, the German parliament ("*Bundestag*") has passed the Transparency Register and Financial Information Act (*Transparenzregister- und Finanzinformationsgesetz*, hereinafter: "TraFinG"). With this newsletter we would like to inform you about what must be observed in the future and what potential obligations your company will face:

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I. Transparency register as full-fledged register

With the TraFinG, the German legislator intends on the one hand to create the data-related prerequisites in order to enable the upcoming networking between the different European transparency registers in accordance with the EU Money Laundering Directive (Directive (EU) 2018/843) and, on the other hand, to implement the EU Financial Information Directive.

a. "Catch-all register"

The EU Money Laundering Directive is being implemented in Germany in two stages. Initially, the transparency register was only created as so-called "catch-all register" (*Auffangregister*). This term derives from the fact that the obligation to register the beneficial owner(s) of a company (*Wirtschaftlich Berechtigter*) with the transparency register was deemed to have been fulfilled if the ownership and control structure and thus the beneficial ownership could be determined from other registers, e.g. the commercial register, which constituted a so-called notification fiction



(*Mitteilungsfiktion*).

Thus, the obligation to register the beneficial owner(s), only affected those legal entities for which this was not the case. The beneficial owner(s) of these companies were consequently "caught" by the transparency register. The determination of the beneficial owner(s) of all other legal entities was left to the obligated parties, who, in case of doubt, had to determine this by calculating the shareholding ratios.

b. Full-fledged register

The second stage will be implemented effective August 1, 2021, as part of the upcoming interconnection of registers within the European Union. For this purpose, the transparency register will be converted from a "catch-all register" to a full-fledged register.

This means that the notification fiction described above will no longer apply in the future. Consequently, all legal entities will be obliged to positively notify the transparency register of their beneficial owner(s). These will then be entered in the transparency register. However, pursuant to Section 59 (8) Money Laundering Act (*GwG*) (effective

as of August 1, 2021), transitional periods will apply to those companies that were previously exempt from the obligation to notify the transparency register due to the notification fiction. Depending on their legal form, those companies will be given time from March 31, 2022, to December 31, 2022, to fulfill their notification obligations. Pursuant to Section 59 (9) *GwG*, the fine provisions are also to be suspended until March 31, 2023, June 30, 2023, or December 31, 2023, again depending on the legal form of the company.

The current legal situation already requires that information on the beneficial owner(s), e.g. name and address, are collected, kept and updated at the company. In the future, the data in the transparency register can be used, among other things, to fulfill this obligation. The legal entity subject to the notification obligation itself will be responsible for ensuring that this data is correct and up-to-date. The fulfillment of this obligation is monitored by the Federal Office of Administration (*Bundesverwaltungsamt*), and violations thereof will be sanctioned.

The legislator's intention is to create a high-quality database. The transformation of the



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transparency register into a full-fledged register will also enable and complete the European interconnection of national transparency registers envisaged as part of the implementation of the second stage.

This is accompanied by the fact that, in the future, the rule presumption regarding the accuracy of the data obtained by obligated parties pursuant to Section 11 (5) GwG prior to the establishment of a business relationship or prior to the execution of a transaction will apply if these data match the data deposited in the transparency register, Section 12 (3) GwG (effective as of August 1, 2021).

Up to now, inspection of the transparency register has not been sufficient to fulfill the verification obligation. The transparency register thus becomes crucial for identifying the beneficial owner(s).

c. Other legal innovations

Furthermore, the German legislator clarifies that the general due diligence obligations pursuant to Section 10 (1) GwG must also be fulfilled for the transfer of crypto values outside of business relationships and from a threshold value of EUR 1,000. In this context, the obligation to fulfill due

diligence obligations pursuant to Section 10 (1) GwG for crypto value transfers is adjusted to the value of money transfers pursuant to Section 10 (3) no. 2 a) GwG.

II. Increased cooperation

The European interconnection of national transparency registers is essentially designed to prosecute and prevent serious crimes and to stop the financing of terrorism. The law enforcement authorities are thus provided with a European database for the prosecution of such crimes.

The TraFinG thus strengthens European cooperation within the framework of Article 87 (2) TFEU in the area of police cooperation. In particular, the exchange of information with Europol will be intensified.

III. Practical Advice

The above-mentioned changes may have very far-reaching effects for companies. Whereas under current law many companies were largely able to remain inactive due to the notification fiction, in the future there will be an obligation to submit a positive notification to the transparency register. The Federal Office of Administration estimates that 2.3 million legal entities will be subject to registration in the future.



As a result, a large number of legal entities are required to report to the transparency register for the first time. Failure to report is subject to a fine after the expiry of the statutory transitional period. Even if this extension of the notification obligation initially leads to greater effort on the part of the obligated legal entities, the upgrading of the transaction register to a full-fledged register should, in the medium term, significantly simplify the identification and updating of the beneficial owner(s) of the company through the possibility of reliable inspection of the transaction register.

If you have any questions regarding the determination of the beneficial owner(s) or the scope of your notification obligation, or if you would like support in fulfilling your notification obligations, we will be happy to advise you and your company.

Best regards from Heidelberg

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